

### **REMARKS/ARGUMENTS**

The present application has been reviewed in light of the Office Action dated July 9, 2007. Claims 1-18 are currently pending, of which claim 15 is amended and claim 18 being added herein. Applicant respectfully requests early and favorable reconsideration of this application.

The specification has been amended herein to correct several inconsistencies. Also, several paragraphs have been deleted from the specification to the extent these paragraphs are duplicative of paragraphs [0035] to [0038] in Publication US 2005/0192602 A1. Applicant respectfully submits that the amendments to the specification add no new matter thereto.

Applicant gratefully acknowledges and thanks the Examiner for indicating that claims 2-6 and 9-11 are objected to as being dependant on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 15 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claim 15 is amended herein so as to further define relevant structural associations. Applicant respectfully submits that, as amended, claim 15 is allowable under 35 U.S.C. § 112.

Claims 1, 7, 8 and 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,632,761 to Smith et al. (hereinafter "Smith"). Applicant respectfully submits that independent claim 1, as originally submitted, is allowable over Smith because Smith fails to disclose each and every element of independent claim 1. Accordingly the rejection of independent claim 1, under 35 U.S.C. § 102(b) in view of Smith is respectfully traversed.

Pursuant to 35 U.S.C. § 102, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Applicant respectfully submits that Smith fails to disclose each and every element recited in claim 1 as required by 35 U.S.C. § 102.

Independent claim 1 recites an apparatus for joining a first body vessel and a second body vessel including, *inter alia*, “a tubular body having. . .an onion portion formed near the distal end of the tubular body for engaging the first body vessel.”

In contrast, Smith discloses an apparatus including a second tube 1004 having a first balloon 1016 formed near its distal end, and a supporting portion 1030 having a second balloon 1018 formed near its distal end. Neither the first balloon 1016 nor the second balloon 1018 constitutes an “onion portion”, as called for in claim 1.

Paragraph [0035] of the present disclosure recites a “[t]ubular body 102 includ[ing] an expandable anchor or onion sleeve portion 114 formed near the distal end 110.” The “onion sleeve portion 114 includes a plurality of radially formed, longitudinally oriented, elongated slots” formed in the tubular body 102. Furthermore, as paragraph [0038] indicates, “[i]t is contemplated that onion sleeve portion 114 . . . [is] made from a medical grade material, such as, for example, stainless steel or titanium.”

Applicant respectfully submits that an “onion portion” does not include structures similar to the first and second balloons 1016, 1018 disclosed in Smith because first and second balloons 1016, 1018 do not include structure associated with an “onion portion”. Furthermore, first and second balloons 1016, 1018 would not be functional if formed from a material such as stainless

steel or titanium, as contemplated for the construction of an “onion portion.” The first and second balloons disclosed in Smith are formed from an elastic or thin inelastic material (see Smith, col. 39, lines 54-66) that will allow for inflation upon the introduction of a suitable inflation fluid (see Smith, col. 40, lines 13-22). Stainless steel and titanium are generally rigid, and consequently do not permit this type of inflation.

Smith further discloses a first tube 1002 comprising a contracting portion 1024 including a “number of deformable, longitudinally-extending segments 1026 . . . deformable along a fold line 1028 so that the segments 1026 bow outward.” (See Smith col. 40, lines 28-31.) The segments 1026 are radially interspaced among an array of “elongated slots” as can be seen in FIG. 49 of Smith.

The contracting portion 1024 disclosed in Smith is not “formed near the *distal* end . . . for *engaging* the first body vessel.” Contracting portion 1024 is formed near the *proximal* end of first tube 1002 enabling a user to adjust a longitudinal length of first tube 1002. Also, contracting portion 1024 does not necessarily *engage* the body in its intended use as described in Smith (see col. 40, line 57 through col. 42, line 32). As seen in FIGS. 51 and 52 of Smith, the contracting portion 1024 in its expanded condition is used without any contact with the body. FIGS. 58 and 59 of Smith depict merely incidental contact with the body as contracting portion 1024 remains entirely outside the working space “WS”. Accordingly, Applicant submits that Smith does not disclose an apparatus including “an onion portion formed near the *distal* end of [a] tubular body for *engaging* [a] first body vessel”, as recited in claim 1.

In light of the above, Applicant respectfully submits that Smith fails to show, teach or suggest each and every feature of independent claim 1. Accordingly, Applicant respectfully submits that claim 1 is allowable under 35 USC § 102(b) over Smith.

As claims 2-12 depend, directly or indirectly, from claim 1 and contain all of the features of claim 1, Applicant respectfully submits that claims 2-12 are also allowable under 35 U.S.C. § 102 over Smith.

Claims 13-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,245,083 to Black et al. (hereinafter “Black”). Applicant respectfully submits that independent claim 13, as submitted, is allowable over Black because Smith fails to disclose each and every element of independent claim 13. Accordingly the rejection of independent claim 13, under 35 U.S.C. § 102(b) in view of Black is respectfully traversed.

Independent claim 13 recites a method for joining a first body vessel and a second body vessel including, *inter alia*, the steps of “passing an apparatus through the second body vessel, the apparatus having a tubular body and an *onion portion*,” and “deploying the *onion portion*.”

In contrast, Black discloses a method of joining tubular organs including the steps of positioning a dual balloon catheter and thereafter inflating the distal balloon 9 (see Black, col. 6, line 58 through col. 7, line 1). The distal balloon 9 disclosed in Black is attached to a port 11 or 12 for inflating the distal balloon using a fluid or gas (see Black, col. 7, lines 58-61).

For the reasons detailed above with reference to claim 1, an inflatable balloon such as distal balloon 9 disclosed in Black does not constitute an “onion portion”, as recited in claim 13. For example, distal balloon 9 does not include “elongated slots” and may not be formed from a

material such as stainless steel or titanium. Accordingly, Applicant submits that Black does not disclose a method including the steps of “passing an apparatus . . . having a tubular body and an *onion portion*,” and “deploying the *onion portion*”, as recited by claim 13.

In light of the above, Applicant respectfully submits that Black fails to show, teach or suggest each and every feature of independent claim 13. Accordingly, Applicant respectfully submits that claim 13 is allowable under 35 USC § 102(b) over Black.

As claims 14-17 depend, directly or indirectly, from claim 13 and contain all of the features of claim 13, Applicant respectfully submits that claims 14-17 are also allowable under 35 U.S.C. § 102 over Black.

Applicant respectfully submits that independent claim 18, newly submitted herein, is allowable over the prior art of record because each and every element of independent claim 18 is not disclosed by the prior art of record. Claim 18 recites an apparatus for joining a first body vessel and a second body vessel including *inter alia* “a sleeve having an expandable onion . . . [and] a lumen for receiving [a] tubular body and being selectively moveable relative to the tubular body *when the onion is in an expanded condition*.”

In contrast, Smith discloses an apparatus including a first tube 1002 having a contracting portion 1024 and a first balloon 1016, and a second tube 1004 disposed partially within first tube 1002. While the apparatus disclosed in Smith permits selective movement of the first tube 1002 relative to second tube 1004, this selective motion is dependant on the expansion or contraction of contracting portion 1024. For example, to move the apparatus disclosed in Smith from the configuration of FIG. 49 to the configuration of FIG. 48, the contracting portion 1024 is moved to an expanded condition. Any further movement of first tube 1002 relative to second tube 1004

requires that contracting portion 1024 is moved *out of* its expanded condition. Accordingly, Applicant submits that Smith does not disclose an apparatus including “a sleeve having an expandable onion . . . the sleeve having a lumen for receiving the tubular body and being selectively moveable relative to the tubular body *when the onion is in an expanded condition*”, as recited by claim 18.

Claim 18 also recites, *inter alia*, an apparatus having a “plunger assembly for being received in the tubular body . . . for deploying the expandable anchor.” In contrast, Black discloses a dual balloon catheter having a distal balloon 9 and a proximal balloon 10. Distal balloon 9 is deployed by introducing an inflation fluid or gas as described above. Black, however, fails to disclose any structure similar to a “plunger assembly . . . for deploying [an] expandable anchor”, as recited by claim 13.

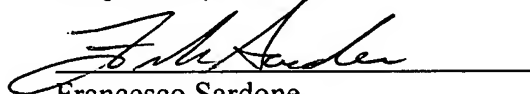
In view of the foregoing, Applicant respectfully submits that the apparatus recited in claim 18 is not disclosed by Smith, Black or the prior art references of record taken individually or in any proper combination with one another. Accordingly, Applicant respectfully submits that claim 18 is allowable over the prior art of record.

In view of the amendments made to the claims herein, and in view of the remarks and arguments presented above, it is respectfully submitted that each of the rejections raised by the examiner in the present Office Action have been overcome. It is respectfully submitted that none of the references of record, considered individually or in any proper combination with one another, disclose or suggest the present invention as claimed.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 1-18 is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Francesco Sardone', is written over a horizontal line.

Francesco Sardone

Reg. No. 47,918

Attorney for applicant

***Carter, DeLuca, Farrell & Schmidt, LLP***

445 Broad Hollow Road, Suite 225

Melville, New York 11747

Telephone: (631) 501-5700

Facsimile: (631) 501-3526